REMARKS

The Office Action dated July 5, 2007 has been carefully reviewed and the following remarks are made in response thereto. In view of the following remarks, Applicants respectfully request reconsideration of this application and timely allowance of the pending claims.

Status of the Claims

Claims 83, 84, 87, and 88 are pending in the present application.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 83, 84, 87, and 88 are rejected under 35 U.S.C. § 103(a) as allegedly obvious over Khwaja et al. (US 6,113,907) in view of Bevilacqua et al. (US 6,692,916). Specifically, the Examiner has stated that Khwaja et al does not teach use of genomic based bioassays, but the Examiner has alleged that it would be obvious to one skilled in the art to apply the genomic-based assay of Bevilacqua to the method of Khwaja for quality control of herbal preparations.

Applicants respectfully submit that Bevilacqua et al. should be removed as an improper reference because the priority date of the present claims antedates the earliest possible priority date of Bevilacqua et al.

The present application claims priority to U.S. Provisional Application No. 60/105,435 (the '435 application, a copy of which is herein enclosed). Applicants note that the pending claims, i.e., claims 83, 84, 87, and 88, are entitled to the priority date of October 23, 1998 based on the filing date of the '435 application because support for the pending claims can be found throughout the '435 application. More specifically, the support can be found in the '435 applications at least as shown in the table below.

Claim	*Claim Elements*	*Exemplary Support*
83	A quality control method for assessing the equivalency of a test batch of an herbal composition to a standardized batch of the same or substantially same herbal composition, wherein the herbal composition comprises multiple chemical components derived from one or more whole	Page 1, line 5; Page 25, lines 5-11; and Page 41, line 23 to Page 42, line 7. Page 2, lines 9-10 and line 21; and

Claim	*Claim Elements*	*Exemplary Support*
83	plant or plant parts, …	Page 20, lines 17-22.
	(a) selecting a preparation of an herbal composition to be the standardized batch;	Page 16, line 19; and Page 24, line 17 to Page 25, line 4.
	(b) characterizing an Herbal BioResponse (HBR) Array for the standardized batch by (i) exposing a characterized biosystem…,	Page 16, line 20; Page 20, lines 1-11; Page 42, lines 10-16; and Page 47, line 21.
	determining … gene expression profile…	Page 17, line 22; Page 26, lines 19-20; and Page 39, lines 10-12 and line 17.
	by using a genomic-based bioassay method…	Page 1, the Title.
	for two or more genes…	Page 26, line 21.
	(ii) storing…	Page 16, line 22.
	(c) characterizing an Herbal BioResponse (HBR) Array for the test batch by (i) exposing a characterized biosystem…,	Page 16, line 20; Page 20, lines 1-11; Page 25, lines 5-11; Page 42, lines 10-16; and Page 47, line 21.
	determining … gene expression profile…	Page 17, line 22; Page 26, lines 19-20; and Page 39, lines 10-12 and line 17.
	by using a genomic-based bioassay method…	Page 1, the Title.
	for two or more genes	Page 26, line 21.
	(ii) storing…	Page 16, line 22; and Page 25, lines 5-11.
	(d) assessing a quantitative similarity value…	Page 15, lines 16-19; Page 39, lines 13-20; and

Claim	*Claim Elements*	*Exemplary Support*
	(e) utilizing...for quality control.	Page 48, lines 1-12. Page 42, lines 3-4
84	... the group consisting of cells, tissues, organs, and whole organisms.	Page 34, lines 16-17.
87	... calculated using normalized values of the Standardized HBR Array and the Test HBR Array.	Page 47, lines 8-10 and 17-19.
88	... the group consisting of gene microarrays, polymerase chain reaction (PCR), cDNA arrays, and oligonucleotide arrays.	Page 28, lines 22-23.

It is axiomatic that a 35 U.S.C. § 103 rejection is based on 35 U.S.C. § 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date. MPEP 2141.01 In the present application, the pending claims are entitled to the priority date of October 23, 1998, while Bevilacqua et al. may at most claim priority back to June 28, 1999 based on the filing date of U.S. Provisional Appl. No. 60/141,542. That is, the present claims antedate Bevilacqua et al., even if Bevilacqua et al. is, *arguendo*, entitled to the earliest priority date of June 28, 1999. Thus, Bevilacqua et al. is not a prior art reference within the scope of 35 U.S.C. § 102(a), 102(b), or 102(e), and thereby should be disqualified as a reference in support of a 103(a) rejection.

Since Bevilacqua et al. is removed as a 103(a) reference and the only remaining Khwaja et al. fails to teach or suggest the use of genomic based bioassays, as acknowledged by the Examiner, Applicants respectfully request the 103(a) rejection be withdrawn.

Conclusion

In view of the foregoing remarks, Applicants respectfully request withdrawal of the outstanding rejection and early notice of allowance to that effect. Should the Examiner believe that a telephonic interview would expedite prosecution and allowance of this application, he is encouraged to contact the undersigned at his convenience.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No.50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

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Respectfully submitted,
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